

# Fair Chance Ordinance

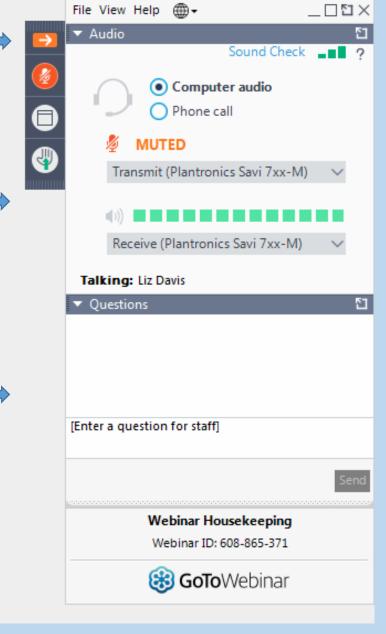
San Francisco Office of Labor Standards Enforcement

# Webinar Housekeeping

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 Use the "Questions" box to ask your questions during the presentation.



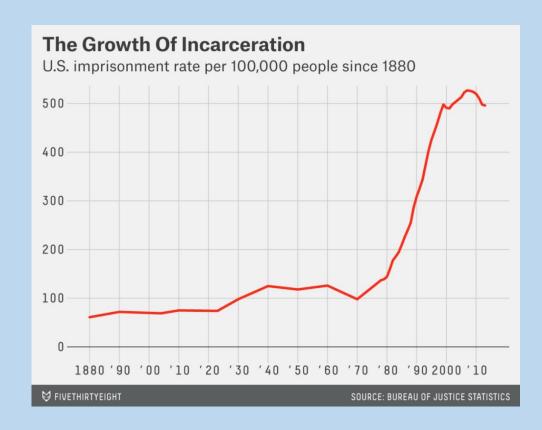


## San Francisco Fair Chance Ordinance

- Signed by Mayor Lee on February 14, 2014
- Operative on August 13, 2014
- Amendment in April 2018, effective October 1, 2018
- Regulates use of arrest and conviction records in <u>employment</u> and in <u>affordable housing</u> decisions
- OLSE enforces employment sections
- The San Francisco Human Rights Commission (HRC) enforces housing components

## "Ban the Box" Laws

- 70 million (nearly 1 in 3) adults in the U.S. have arrests or convictions on their record
- Employment is the #1 factor affecting return to criminal justice system
- 29 states and 150 cities and counties now have Ban the Box laws



## Who is Covered?

- Police Code Article 49: Employers Citywide
  - 5+ employees worldwide & any employees (or planned positions) in SF
  - Any position where the employee works/will work at least 8 hours/week in SF
- Admin Code 12T: City Contractors
  - Any size & any employees (or planned positions) in SF
  - Any position where the employee works/will work at least 8 hours/week in SF

# Job Announcements

 <u>cannot</u> say that someone with arrests or convictions will not be considered, or that a background check must be "passed."



must include an affirmative statement of compliance with the FCO:

"Pursuant to the San Francisco Fair Chance Ordinance, we will consider for employment qualified applicants with arrest and conviction records."

# **Applications**

- Job applications <u>cannot</u> ask about the applicant's history of arrests or convictions
- Employers <u>cannot</u> ask about, or inquire into, convictions or unresolved arrests until after a conditional offer of employment.



# **Background Check Prohibited Information**

### Six categories of information may not be considered at any time:

- 1. an arrest not leading to a conviction (except unresolved arrests)
- 2. participation in a diversion or deferral of judgment program
- 3. a conviction that has been dismissed or expunged
- 4. a conviction in the juvenile justice system
- 5. a conviction that is more than 7 years old
- 6. an offense other than a felony or misdemeanor (i.e. traffic ticket)
- 7. Any decriminalized offense (such as some cannabis convictions)



# **Background Check Procedures**

When considering an applicant's conviction history, the Employer must:

- provide the applicant with a copy of the <u>FCO Notice</u>
  <u>& background check</u>
- give the applicant <u>seven days to respond</u> correct or provide evidence of rehabilitation or mitigating factors
- consider only <u>Directly-Related Convictions</u>
- treat each applicant as an individual <u>no</u> <u>automatic rejections</u>



#### DEFICIAL NOTICE TO JOB APPLICANTS AND EMPLO

#### Fair Chance Ordinance

Starting August 13, 2014, the Fair Chance Ordinance (Sun Franchez-Faire Code, Article 49) requires employers to follow strict rules regarding the tree of arrest and correlates records in biring and employment decisions. The ordinance covers job applicants and employees who would be or are performing work in whole, or in substantial part, in Sun Francisco and applice to employees who have 20 or more employees (regardless of the employees' feedings).

Certain mattern are off. Itails. An employer may enter as a front, require disclosure of, or consider, an arrest not leading to a consistion (after the an a manufact) ment that is all landangings critical interacting and trially participation in a diversion or deferred of judgment program; a consistion that has been expanged or made importantly any determination in the jurvately institute a system; a consistion more than 7 years old and a critical offerms other than a followy triademonates. Mattern that are off-famile omnet the used by the employer for any cannot a set among of the letter and off-famile of the consistency of the setting of the consistency of the setting of the consistency of the setting of the settin

An employer cannot ask about an individual's conviction history or unresolved arrests at the start of the histog process. This includes through a job application form, informal conversation, or otherwise.

A mandatory interestive penerses for matters not off iliaits. Only ofter a live interview has been conducted, or conditional offer of complement made, it he complete allowed in our laboral manda indicated in consistent history (except not or matters that not off-limital) and surressived arrests. Only those convictions and susmoothed areast that divertly relates to the individual's billity to do the job may be considered in making an employment decision.

Before the complexer may take an advance action such as failing defining to biar, discharging, or not promoting as individual based on a conviction history or answorked arous, the complexer must give the individual an opportunity to protect evidence that the information is innovariat, the advisional has been reliabilisted, or other neighbor factors. The individual has been obtained to the contribution of the contribution o

Environce of returbilization include satisfying perologicobation; receiving education training; participating in absolution; treatment programs, latters of recommendation, and age at which the individual was consisted. Articipating (betters include conscion, physical or constituted absolute, and untreated arbeitance absolute trained in that contributed to the consisten.

Precongium. Where federal or state law imposes a criminal history requirement that conflicts with a requirem of the Fuir Chance Ordinance, the federal or state law will apply.

No Braillation. An employee may not late an adverse action against an agricunt or employee for exercising their rights under the relations or cooperating with the Office of Labor Frankeds Enforcement (OLSE) reresent the order of the Cooperation of the Office of Labor Frankeds Enforcement (OLSE) at all content of the Cooperation o

Employees must post this notice in English, Spanish, Chinese, and any language upston by at least 5% of the employees at the workplace, job size, or other location at which it is posted. For copies of this notice in Spanish, Chinese, Filipho, Victimates, and Morian wish wow. Appro. employee (200 or and 1441) 5545-5192.

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# **Exceptions to Prohibited Information**

Employers can consider convictions and arrests prior to 7-year lookback period for jobs supervising:

- Minors
- Dependent adults
- Persons 65 years or older

Employers can consider infractions (driving record) where driving is a significant part of the job



# State and Federal Preemptions

- Federal or State laws that require background checks for certain jobs preempt the FCO.
  - Example: financial services/insurance employees



# What the FCO Doesn't Do:

- FCO does NOT require employers to give preference to, or hire an unqualified individual with an arrest or conviction record.
- FCO does NOT limit employers' ability to choose the most qualified and appropriate candidate among the applicants.
- FCO does NOT require employers to conduct a background check.
- FCO does NOT prohibit employers from conducting a background check.



# Common Compliance Issues

### **Common Violations**

- Asking about convictions on job applications
- Conducting a background check before a conditional offer of employment
- Implying that no individuals with convictions will be hired on job announcements
- Not including a statement of FCO compliance on job announcements
- Improper process for notifying applicants of records found/considered
  - Failing to provide a copy of the background check
  - Failing to provide 7 days for applicant to review and respond

### Resources

### SF Fair Chance Ordinance

- Employment Questions Office of Labor Standards Enforcement
  - Web page: <a href="http://sfgov.org/olse/fco">http://sfgov.org/olse/fco</a>
  - Phone hotline: (415) 554-5192
  - Email address: <u>fce@sfgov.org</u>
- Affordable Housing Questions Human Rights Commisson
  - Web page: <a href="http://sf-hrc.org/fair-chance-ordinance">http://sf-hrc.org/fair-chance-ordinance</a>

### California Fair Chance Act

• <u>Text of AB-1008</u> (link)

